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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,486	06/15/2001	Jay H. Connelly	042390P11861	8023

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EXAMINER

SALCE, JASON P

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/882,486	<b>Applicant(s)</b> CONNELLY, JAY H.	
	<b>Examiner</b> Jason P. Salce	<b>Art Unit</b> 2614	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-15, 32-37, 53-56 and 77-79 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-15, 32-37, 53-56 and 77-79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/31/2005 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10, 12-15, 32, 34-37, 53, 55-56, 77 and 79 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Shah-Nazaroff et al. (U.S. Patent No. 6,317,881).

Referring to claim 10, Shah-Nazaroff discloses receiving, at a client, content descriptors, which describe pieces of content (different programs and information related to the programs), from a server (see Column 3, Lines 24-27).

Shah-Nazaroff also discloses generating demand data related to the pieces of content described by the content descriptors (see Column 3, Lines 27-30 and Figures 4-7).

Shah-Nazaroff also discloses sending demand data feedback from the client to the server after demand data related to a predetermined amount of pieces of content is generated (see Column 3, Lines 48-55 and Figures 4-7).

Referring to claim 12, Shah-Nazaroff discloses receiving explicit user input regarding specific pieces of content (see Figures 4-7).

Referring to claim 13, Shah-Nazaroff discloses (in the rejection of claim 10) sending demand data to the server after demand data related to a first predetermined number of pieces of content (in the questionnaire) have been generated (answered by the user).

Referring to claim 14, Shah-Nazaroff discloses ranking the pieces of content (see step 330 in Figure 3).

Referring to claim 15, Shah-Nazaroff discloses rating the pieces of content (see step 240 in Figure 2).

Referring to claim 32, see the rejection of claim 10.

Referring to claims 33-37, see the rejection of claims 12-15, respectively.

Referring to claim 53, see the rejection of claims 10 and 14.

Referring to claims 55-56, see the rejection of claims 12-13.

Referring to claim 77, see the rejection of claim 10.

Referring to claim 79, see the rejection of claim 12.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 11, 33, 54 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah-Nazaroff et al. (U.S. Patent No. 6,317,881) in view of Payton et al. (U.S. Patent No. 5,790,935).

Referring to claim 11, Shah-Nazaroff discloses all of the limitations in claim 10, but fails to teach the generation of the demand data comprises consuming at least a portion of the pieces of content locally stored at the client, the generation of demand data responsive to the portion of the pieces of content.

Payton discloses the generation of the demand data comprises consuming at least a portion of the pieces of content locally stored at the client (see Column 7, Lines 13-25 for determining if a movie is stored at the local storage 56 or at the remote storage 34), the generation of demand data responsive to the portion of the pieces of content (see Column 6, Lines 36-50 for generating demand data based on the content that is consumed by a subscriber).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the demand data generation system, as taught by Shah-Nazaroff, using the local content demand data consumption method, as taught by

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Payton, for the purpose of offloading required bandwidth from a central distribution server (see Column 3, Lines 37-39 of Payton).

Referring to claims 33, 54 and 78, see the rejection of claim 11.

**Conclusion**

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Salce whose telephone number is (571) 272-7301. The examiner can normally be reached on M-F 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jason P Salce  
Patent Examiner  
Art Unit 2614

August 10, 2005

